Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

The Applicant seeks to cancel a One-Month Notice to End Tenancy dated July 8, 2021 (the "One-Month Notice") that was issued by the Respondent pursuant to the *Residential Tenancy Act* (the "*RTA*"). The Applicant filed their application under the *Manufactured Home Park Tenancy Act* (the "*MHPTA*") and seek an order under s. 55 of the *MHPTA* that the Respondent comply with the *MHPTA*. The Applicant also seeks return of their filing fee.

K.C. appeared as advocate for the Applicant. B.C. appeared as the Applicant. S.C. and L.C. appeared as witnesses for the Applicant.

P.O. appeared as counsel for the Respondent. W.C. and G.C. appeared as agents and principals for the corporate Respondent.

This matter was originally brought on for hearing on November 16, 2021 and was adjourned. The arbitrator that heard the matter on November 16, 2021 has since left the Residential Tenancy Branch. In the interest of transparency, I have previously heard a dispute between these parties on an application brought by the corporate Respondent in the fall of 2021. The parties raised no issues with my hearing the present matter during the hearing.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing.

No issues were raised with respect to service of each parties' evidence and no additional evidence was permitted after the adjournment of November 16, 2021. I find that the parties' application materials and evidence were sufficiently served on each other pursuant to s. 64(2) of the *MHPTA*.

Issue(s) to be Decided

1. Do I have jurisdiction to determine this dispute?
2. If so, does the *MHPTA* or the *RTA* apply?
3. Should the One-Month Notice be cancelled? If not, is the Respondent entitled to an order for possession?
4. Is the Applicant entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The property owned by the Respondent is in a rural coastal setting. The principals for the corporate Respondent are G.C. and W.C.. The Applicant is nephew to G.C. and W.C..

In an affidavit sworn by G.C. on September 20, 2021, it states that the property in was purchased by the Respondent in 1996 and was intended to be used as a vacation and investment property. The Respondent explained that they had retained a property manager, J.T., to look after the subject property, though that arrangement ended in 2016 after J.T. passed away.

The Applicant was a licenced real estate agent, though he lost his licence sometime in 2015. As explained during the hearing, the Applicant and G.C. operated a real estate business together for some time and other businesses that were not described. The parties' real estate business ceased operations some years ago. G.C. says the business failed due to the Applicant.

The parties agree that their business relationship were all conducted without written contracts. The Applicant admitted at the hearing that the parties' business management

practices were disorganized. There is no written tenancy agreement or any other written agreement defining the parties' legal relationship to one another.

In the Respondent's telling, they had discovered that the Applicant had moved into an A-Frame on the property in 2016 after J.T. had passed away. According to the Respondent, the Applicant has stayed in the A-Frame since then.

According to the Applicant, he has occupied a rental pad where he has parked an RV trailer. He says he owns the RV trailer. In the Applicant's written submissions, it indicates that he has had exclusive possession of the rental pad since 2016. At the hearing, the Applicant explained that he had separate accommodation from 2016 until 2018 but has resided exclusively in his RV Trailer located the property since 2018.

The Respondent argues that the Applicant has a licence to occupy the property and that the Residential Tenancy Branch does not have jurisdiction to hear the present dispute. The Respondent further argues that if I find that I do have jurisdiction, then the *RTA* applies, not the *MHPTA* as argued by the Applicant.

The Applicant argues that he has a tenancy under the *MHPTA* by virtue of his exclusive occupation of a rental pad since 2018. The Applicant says that the terms of the tenancy are such that he pays no fixed amount of rent for his pad. Rather, the consideration for the rental pad comes in the form of management services the Applicant says he performs for the Respondent.

The Applicant admits that no accounting was ever provided to the Respondent with respect to his management of the property. Again, there was no agreement defining the Applicant's purported role as property manager. In the Applicant's telling, he looked after tenants at the property, collected rent, and provided general maintenance services at the property.

The Respondent indicates that they never authorized the Applicant to permit tenants to live on the property. In G.C.'s affidavit, it states that the Respondent expected the Applicant to maintain the property in accordance with health and safety standards.

G.C., when questioned by the Applicant's advocate at the hearing, explained that after J.T. died in 2016 the Respondent expected the Applicant to look after the property and keep it in a saleable condition. Pursuant to the management arrangement described by G.C., the Respondent paid the Applicant $2,000.00 per month to look after the property,

however, these payments ended. When these payments occurred, or when they ceased, was not specified by G.C.. G.C. explained that he expected the Applicant to keep the property in a saleable condition and could live at the property at no cost.

G.C.'s affidavit explains that in 2019 the Respondent discovered that the Applicant had been renting the property "to several person with trailers, boats, and unlicensed vehicles." The affidavit states that this was done without the knowledge or consent of the Respondent and that they demanded the Applicant to desist from similar activity in the future. However, when under examination at the hearing, G.C. acknowledged that he knew the other occupants were at the property and had permitted the Applicant to allow occupants, provided they were always short-term.

In the Applicant's evidence, there are various documents from 2015 in which the Applicant is purported to be acting as a property manager for the Respondent. A letter dated February 16, 2015 is addressed to G.T. and signed by the Applicant on behalf the Respondent. In the letter, the Respondent threatens to terminate G.T.'s tenancy if a BC Hydro account was not paid. A note signed by the Applicant and J.T. on June 27, 2015 indicates that J.T. was renting a cabin at the property for $300.00 per month, excluding utilities. G.T. and J.T. appear to be the same person though the spelling of the first letter of the surname is different within the documents. Spreadsheets that appear to have been created by the Applicant shows that he claims to have been providing management services in 2013.

The Applicant also provides a Facebook message sent by W.C. to L.C. in September 2020. L.C. is a family member to G.C., W.C., and the Applicant. The message is reproduced as follows:

> Hi [L.C.]
>
> Thanks for your note yesterday about the property at [redacted].
>
> Yes it has been for sale for over 15 years and it was all but sold a couple of years ago but the deal fell through. As [the Applicant] was one of the people who helped [G.C.] purchase the land and obtain the multiple dwelling license, this should not be a surprise.
>
> [G.C.] buys and sells properties as part of our income and this property was never intended to be kept as a family possession We have all had fun up there

over the years but we cannot keep it for sentimental reasons. As we currently pay all the taxes and insurance and are occasionally reimbursed for hydro; this becomes a money drain for us.

Also if we were to keep it the dock needs major work and repairs and we are not willing to pay for that at this time.

As it is for sale if you and other people want to purchase it we are happy for it to stay in the family.

We are working with our lawyer to draw up papers that will ensure a smooth transition for all parties concerned and give you an opportunity to negotiate your staying with the new owners.

I am glad you and your children are enjoying it there; as you say it is a special place indeed.

We will keep you informed through [the Applicant] about any pending showing and/or sale so that you can make arrangements to move if necessary.

All the best,
[W.C] and [G.C.]

I have anonymized the names and locations in the interest of the parties' privacy. The Applicant says that W.C. had not been to property for many years and that G.C. does not attend the property with any frequency.

In the Applicant's evidence, there is a handwritten sale contract for the property from 2016, which lists the Respondent as the seller and is signed by the Applicant.

The Applicant says that the property has always been tenanted and points to a 2015 real estate listing for the property that describes that the property had "four residential dwellings [that were] tenanted".

The Applicant called two witnesses at the hearing, S.C. and L.C., both of whom claim to be tenants to the Respondent. The Applicant says that written tenancy agreements were put together with S.C. and L.C.. However, these tenancy agreements were not put

into evidence. According to S.C. and L.C., it is their understanding that the Applicant is property manager for the Respondent.

In the case of L.C., she says that she has been living at the property since February 1, 2019. She says that she singed a tenancy agreement with the Applicant and the Applicant is listed as the landlord in her tenancy agreement. L.C. says she pays rent directly to the Applicant and that the Applicant has always put himself out as property manager for the Respondent.

S.C. says that she lived at the property during two periods of time: the first in 2018 for a period of 6-months and the second from March 2021 to present. She too signed a tenancy agreement with the Applicant and says that she pays $800.00 in rent to the Applicant. S.C. is said to be living in the A-Frame that the Respondent's claim the Applicant occupies.

The Applicant advised that S.C. had brought an application before the Residential Tenancy Branch and directed me to the reasons for judgment in that matter. In S.C.'s application, she named G.C. and W.C. as the respondent landlords in a claim for emergency repairs. It was found in that matter that the Applicant was working as an agent for G.C. and W.C. and that they had a landlord/tenant relationship with S.C..

The Respondent claims to have never received rent from the Applicant for any of the purported tenants. The Applicant indicates that he uses the rent to help pay for the property maintenance costs. He further stated at the hearing that he has given G.C. cash but provides no evidence to support that any money has ever paid to the Respondent or its principals.

The Respondent says that the property is not zoned as a mobile home park but is zoned as a residential and auxiliary commercial property with the local municipality. The Respondent says that it can be used as a campground, though it does not appear that the Respondent has ever operated a campground at the property.

G.C. further stated that the Applicant has parked his RV trailer on the foundations of a burnt down building. The Applicant indicates that the parking spot has permanent services. Based on the Respondent's evidence, it appears that the Applicant has brought electricity to the RV trailer using an extension cord running from the A-Frame. Photographs were provided of the RV trailer by the parties, none of which provide clarity on what services, if any, are associated with the spot.

The Applicant provides a copy of a notice he says he provided to the other occupants at the property on June 1, 2021 indicating that the Respondent would be selling the property in the near future, that they Respondent intended to offer vacant possession of the property to the prospective buyer, and that arrangements would be made with the occupants facilitate vacant possession.

The Respondent's lawyer provided a letter to the Applicant dated June 3, 2021 where a number of breaches are alleged by the Respondent with respect to the occupancy arrangement they have with the Applicant. The letter ended with a demand that the breaches be rectified within 30-days.

The One-Month Notice was signed on July 5, 2021 in which the Respondent alleges that the Applicant has put the Respondent's property at significant risk, that the Applicant has breached a material term of the tenancy agreement and not corrected it, and that the Applicant has assigned or sublet the property without the Respondent's consent.

The details of cause in the One-Month Notice describes permitting unauthorized occupants, failure to control weeds at the property, and permitting unlicensed vehicles to be parked on the property. At the hearing, the Respondent alleges there are several electrical deficiencies at the property. The Respondent's evidence includes an electrical inspection report indicating deficiencies found with the electrical at the property after an inspection was conducted on August 31, 2021. Photographs of the electrical wiring issues were provided by the Respondent.

The Respondent also provides a statement from A.K. dated October 8, 2021 detailing the events of a visit to the property on October 4th. A.K.'s employer appears to have obtained a permit to repair the electrical deficiencies based on the contents of the letter. A.K. alleges that the Applicant initially denied access to the property but then permitted A.K. to address the immediate electrical safety concerns after the Applicant had spoken with his advocate.

The Applicant indicates that the electrical issues were the result of J.T., who he says had undertaken unlicensed electrical work prior to his passing in 2016. When asked directly whether the Applicant undertook any electrical work himself, the Applicant avoided providing a clear response.

The Respondent's counsel indicated that though there is no written tenancy agreement, if there is a tenancy the Applicant has an obligation to maintain the property as part of the terms of a standard tenancy agreement. The Respondent says that that the Applicant has failed to do so.

Both parties referred me to decisions of the Residential Tenancy Branch and the BC Supreme Court.

Analysis

The Applicant seeks to cancel a One-Month Notice and an order that the Respondent comply with the *MHPTA*.

Policy Guideline #9 provides guidance with respect to distinguishing between tenancies and licences to occupy. Under a tenancy agreement, a tenant has exclusive possession of a rental unit or site for a specific term. Under a licence to occupy, a person has permission to use a rental unit or side, but that permission may be revoked at any time. The Residential Tenancy Branch has jurisdiction to determine disputes with respect to tenancies but does not have jurisdiction to determine disputes with respect to licences to occupy. Whether a tenancy exists or not turns on the parties' intentions and the facts of each case.

The Applicant cites *McDonald v Creekside Campgrounds and RV Park*, 2020 BCSC 2095 ("*Creekside*") in support of their position. In that case, the petitioner on judicial review was a purported tenant under the *MHPTA* whose application before the Residential Tenancy Branch was initially dismissed as the arbitrator found that they did not have jurisdiction to determine the dispute. The purported tenant in *Creekside* occupied an RV trailer at a campground. The judge on review set aside the arbitrator's decision and remitted the matter back to the Residential Tenancy Branch for redetermination.

Policy Guideline #9 sets out that there is a presumption of tenancy where:

a) The tenant gains exclusive possession of the rental unit or site for a term and subject to a landlord's right to access the site; and
b) The tenant pays a fixed amount of rent.

As explained in *Creekside* at paras 52 and 53, the presumption of tenancy, once established by the applicant, shifts the evidentiary burden on the respondent to show

that there is no tenancy. Therefore, the burden rests with the Applicant to show that the basic aspects of a tenancy exist, which would then give rise to the presumption that a tenancy exists. That presumption is rebuttable by the respondent.

There is no written tenancy agreement nor is the any written agreement defining the parties' legal relationship. However, the lack of any written agreement is not determinative.

I am satisfied on the evidence from the applicant that he has exclusively resided at the subject property since 2018. The Applicant was clear in his evidence that he moved to the property full-time in 2018. This point was not directly disputed by the Respondent. The Respondent say that he moved to the property in 2016, though I accept the Applicant's evidence that this was temporary and that he moved there full-time in 2018. The only dispute is whether the Applicant resides in the A-Frame or in the RV trailer.

I find that on balance, the Applicant likely resides in the RV trailer. The principals for the Respondent have not attended the property with any frequency for many years, which was not directly disputed by the Respondent or its principals. Further, it appears that the A-Frame is currently occupied by S.C.. The photographs provided by the Respondent would indicate that the A-Frame's kitchen is being used. However, this would be consistent with S.C.'s occupation of the A-Frame.

I find that the Applicant has exclusively resided in his RV trailer since 2018.

However, the issue with the present dispute arises from the parties disorganized business. The Respondent's evidence indicates that the property is zoned for use as a campground. However, it does not appear that the property is an organized campground for which any member of the public may attend, pay a fee, and stay for a period of time. I place weight on W.C.'s Facebook message to L.C., which would indicate that the Respondent treated the property as a speculative holding to be sold at a later date. Family members have used the property over the years, but it was never a going concern. Indeed, W.C. describes the property as "money drain".

Indeed, the property has been for sale for 15 years. The property listing from 2015 indicates that the property was tenanted at that time, however, the property's use for rental income does not appear to be a driving force for the Respondent. The Applicant says he collects rent for the Respondent and has given cash to G.C.. The Applicant provides no evidence of this. There is no accounting for rent, there are no tenancy

agreements in evidence other than a handwritten note with respect to J.T.'s tenancy in 2015. I would expect that if rental income was a priority for the Respondent, there would be records, receipts, and deposit information. No such evidence was provided to me.

All of which raises the question: what is the Applicant's relationship to the corporate Respondent? The parties acknowledged that the Applicant had a prior business relationship with G.C., which included a real estate business. G.C. says the business failed. Respondent's counsel says the Applicant lost his real estate licence in 2015. The listing agent in the 2015 property listing had the Applicant listed as the realtor for the Respondent.

I find that the Applicant acted on behalf of the Respondent with the knowledge and consent of its principals G.C. and W.C.. The Applicant's evidence show that he was acting on behalf of the Respondent beginning in at least 2015, which can be seen in the 2015 listing agreement, the purported sale contract from 2016, and the handwritten tenancy agreement between the Respondent and J.T. from 2015. The Facebook message from W.C. in 2020 further reinforces this point.

The Respondent admits to making payments of $2,000.00 per month to the Applicant for management services, though when this occurred and when it ceased is unclear based on the parties' submissions. G.C. admits that the arrangement was such that the Applicant was to keep the property in saleable condition and would be permitted to stay at the property at no cost. This was not disputed by Applicant.

The Applicant says that the property management services were provided in lieu of rent, such that rent was $0.00. This is where I struggle with the Applicant's position. The presumption of tenancy only arises when it can be shown that the purported tenant pays a fixed amount of rent for the exclusive occupation of the rental unit. No rent has been paid by the Applicant, nor has rent ever been paid by the Applicant. Speaking generally, there may very well be consideration in a contract when one party provides services to another. However, Policy Guideline 9 is explicit that rent must be in a fixed amount to give rise to a presumption that a tenancy exists. There is no fixed amount for rent, nor is there an accounting for the services the Applicant provides the Respondent, which would indicate a fixed amount of services being provided to the Respondent.

There are also issues with respect to the term of the Applicant's purported tenancy. The parties' arrangement appears to be open ended: the Applicant was to stay at the property to keep it in a saleable condition and could stay without cost. This does not

indicate that the Applicant was to have exclusive occupancy of the site for a term, such as a week, a month, or a year. Indeed, there is a logical inference based on the parties' arrangement that the Applicant's occupation of the site could be revoked at any time once the property was sold. If he was to keep the property in saleable condition, that would come to an end once the property was sold. I find that the Applicant's occupation of the site could be revoked at any time, in particular upon the sale of the property.

I place significant weight in the familial component in this dispute, as the Applicant is nephew to G.C. and W.C.. I place further weight in the prior business dealings between the Applicant and G.C.. These pre-existing relationships lead me to conclude that Respondent permitted the Applicant to stay at the property due to the personal relationship and due to the understanding the parties had that the Applicant would keep the property in a saleable condition.

I find that the Applicant has failed to establish that he had exclusive occupation of the site for a term in exchange for a fixed amount of rent. Therefore, the presumption of tenancy is not triggered.

As the basic elements of a tenancy are not present, I find that I do not have jurisdiction to determine this dispute. The Applicant has a licence to occupy the property. The *RTA* and the *MHPTA* do not apply.

I would note that I do not consider the Respondent's issuance of the One-Month Notice relevant or determinative. A party can no more attorn to the jurisdiction of the Residential Tenancy Branch by mere act of issuing a notice to end tenancy than it can avoid it with words to that affect in a tenancy agreement. It is a question of fact on whether there is a tenancy or not. As noted above, I find that there is no tenancy.

Conclusion

I find that I do not have jurisdiction to determine this dispute as the Applicant has a licence to occupy the site.

Accordingly, the application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: February 10, 2022

Residential Tenancy Branch